

STATE OF MICHIGAN
COURT OF APPEALS

INKSTER HOUSING COMMISSION,
Plaintiff-Appellee,

UNPUBLISHED
January 20, 2015

v

TOWANA R. ALLEN,
Defendant-Appellant,

No. 317507
Wayne Circuit Court
LC No. 13-000079-AV

Before: FORT HOOD, P.J., and HOEKSTRA and O'CONNELL, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that the district court's finding that some misrepresentation existed was supported by the evidence. However, I respectfully dissent from the rest of the majority's opinion. I would vacate the trial court's decision and remand for further proceedings. On remand, the trial court should be required to make findings of fact and conclusions of law sufficient to allow this Court to review the trial court's decision. See MCR 2.517.

This action is a district court eviction proceeding pertaining to subsidized housing. Defendant entered into a lease with plaintiff for subsidized housing on August 1, 2012. The lease was for a three-bedroom unit and listed three residents, defendant and her two grandchildren. On September 12, 2012, plaintiff served a notice to quit on defendant. The notice stated the following reasons for terminating the lease:

Violation of dwelling lease agreement, see lease paragraph 8, tenant has intentionally misrepresented facts to determine eligibility for program assistance. Tenant is in direct violation of HUD's multi-subsidy policy. Tenant or household members [sic] rent is being subsidized by more than one rental assistance program.

Plaintiff sought to terminate defendant's tenancy, alleging in its complaint an "intentional misrepresentation [of] or willful failure" to notify management of certain information, such as a change in family income, family size, "or other circumstance."

After a brief hearing, at which defendant did not present any evidence, the trial court found that there was "some misrepresentation" that constituted a violation of the lease. When

the defendant asked the district court to explain its ruling, the district court stated, “all I know is that these children were receiving double subsidies, either by your hand or by [Tiffany]’s hand.”

At the hearing in this matter, it was not disputed that both defendant and Tiffany (defendant’s daughter) had represented that the children resided with them. I concur with the majority’s conclusion that the two children could not reside with both defendant and Tiffany at the same time and that the district court’s finding that “some misrepresentation” existed was clearly supported by the evidence.

The trial court concluded that the existence of duplicate subsidies was “in violation of the rules for maintaining Inkster Public Housing.” The trial court also explained to defendant, “that’s what you need to know, because you have a contract and an agreement that says if you involve yourself in multi-subsidies, then you’re in violation of the lease.” Furthermore the trial court concluded that defendant violated the Code of Federal regulation (CFR) regarding subsidized housing. Unfortunately absent from the record is any factual finding by the trial court to support its conclusions.

The majority opinion concludes that the remedy for the trial court’s failure to make specific findings of fact is reversal. I disagree. “If a trial court fails to make reviewable findings of fact, the proper remedy is to remand for a new hearing.” *Parent v Parent*, 282 Mich App 152, 157; 762 NW2d 553 (2009). Also see *Opal Lake Ass’n v Michaywé Ltd Partnership*, 47 Mich App 354, 369-370; 209 NW2d 478 (1973). Clearly, if defendant is receiving subsidies for children that are living with their mother, or defendant misrepresented the reasons for the subsidies, or the defendant is in violation of the CFR or the Inkster Public Housing rules and regulations, defendant may be evicted from public housing. The proper remedy in this case is to remand for further findings of fact and conclusions of law.

I would vacate the trial court’s decision and remand for further proceedings. Since defendant was not represented by counsel below, I would allow either party to request to reopen proofs in this matter. I would require the trial court to make specific findings of fact and conclusions of law. I would retain jurisdiction.

/s/ Peter D. O’Connell